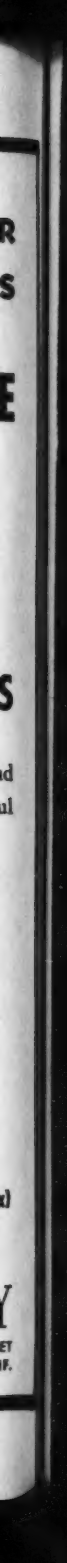
LOS ANGELES BAR BULLETIN

In This Issue

Vol. 26 DECEMBER, 1950 No. 4



Los Angeles
BAR BULLETIN

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VOL. 26 DECEMBER, 1950 No. 4

THE PRESIDENT'S PAGE

LAWYER REFERENCE SERVICE—PREVENTIVE LAW:

Dana Latham

THE Los Angeles Bar Association pioneered the lawyer reference field, our plan having been established as of January 1, 1938. Our contribution to this service has been recognized by the American Bar Association and has been referred to in an article published in the spring of this year in "This Week," and later reprinted in condensed form in a recent issue of the "Reader's Digest."

As you know, the Lawyer Reference Service is open to all attorneys regardless of membership in the Association. The registration fee is $5 per twelve-month period. Each registrant selects a field or fields of law in which he may feel especially qualified. Requests for information are referred by our Executive Office to registrants in rotation.

The registrant agrees to consult with the prospective client for one-half hour for a fee of $5 or for a full hour for $7.50. If the attorney-client relationship is established, the additional charges are as agreed to by the parties.

At present there are 398 attorneys enrolled in the Service and approximately 2,000 references are made per year. The Service, which has not heretofore been advertised except in the local telephone directory, is growing steadily but there is great opportunity for expansion.

The Committee on Lawyer Reference Service of the Association, chairmaned by George Bouchard, is presently considering additional publicity, both through radio and newspapers, which it is hoped will bring about a substantial increase both in number of registrants and inquirers.

We all know that the agreed fee for the preliminary conference is inadequate in amount. On the other hand, I feel that this pro-

gram offers a great service to the public and an opportunity to better our relations with the public as a whole. It is unnecessary to point out that the average person views the legal profession with skepticism. At the same time anything which we as lawyers can do to improve this viewpoint will inevitably redound to the benefit of every lawyer. Accordingly, it is to be hoped that more lawyers will register in the Service and undertake the representation of persons of limited means even though it may entail some slight financial sacrifice.

PREVENTIVE LAW:

Those who use the Lawyer Reference Service are generally already in trouble. One of our pressing social problems is the education of the layman to employ legal services before trouble arises. The benefits from such an approach to all concerned are obvious.

The Los Angeles Bar Association has a responsibility to help in educating the public along these constructive lines. This can be done in many ways but the proper approach will require substantial study. The matter is probably important enough to warrant the appointment of a special committee, and I intend to make such a recommendation to my successor.

A member of our Association, Louis M. Brown, is a pioneer in this field, having recently published a book entitled "Manual of Preventive Law," which is reviewed by Walter L. Nossaman in this issue of the LOS ANGELES BAR BULLETIN.

The furtherance of the theory and practice of preventive law as a means of increasing the stature of the lawyer of today is undoubtedly a worthwhile undertaking for all of us.

In considering the importance of our Lawyer Reference Service and the general concept of preventive law as a means of rendering public service and improving our own standing, I recommend to you an editorial by Robert E. G. Harris, which appeared in the *Los Angeles Times* on November 1, 1950, and which is entitled "Legal Services Tailored for an Economy Budget."

DANA LATHAM.

THAT CHRISTMAS JINKS

Once again the annual strictly-for-fun gathering of the Los Angeles Bar Association approaches in the form of the Christmas

(Continued on page 142)

CITY ATTORNEYS OF LOS ANGELES

By Leon Thomas David*

X.
—THE LAST FORTY YEARS.

Leon Thomas David

WHEN John Wesley Shenk was appointed to the Los Angeles Superior Court in 1913, his successor as City Attorney was Albert Lee Stephens, the first graduate of the law department of the University of Southern California to hold that office. Born in Indiana in 1874, City Attorney Stephens was already known in civic circles, since from 1911 to 1913, he had served on the civil service commission, which was then pioneering in municipal personnel matters. His career from city attorney to superior court judge, to judge of the United States District Court, to Justice of the U. S. Circuit Court of Appeals for the Ninth Circuit, is well known,[1] and will deserve an individual biography at a later time. Appointed to the Bench in 1919, Albert Lee Stephens was succeeded as city attorney by Charles Burnell, who had served in the city attorney's office since 1913, and in 1918 for a brief period had been counsel for the Los Angeles Flood Control District.[2]

As City Attorney Burnell made his way to the Superior Court bench, he was followed by another illustrious member of the Stephens family, Jess E. Stephens.[3] During his administration of eight years, the expansion of the city involved millions of dollars expended for public improvements; thousands of special assessment matters were handled by the office; the utility departments grew apace; the city built and occupied the new City Hall. William

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*Judge, Municipal Court, Los Angeles; Assistant City Attorney, Los Angeles, 1934-1950.

[1]Consult, *Bench and Bar of Southern California*, p. 234; IV *California and Californians*, p. 322. As will hereinafter appear, his brother Jess Stephens became city attorney and Superior Court Judge, and his son, Clarke Stephens, is now Judge of the Municipal Court, Los Angeles.

[2]Judge Burnell was born in Elko, Nevada, 1874; was graduated with the pioneer class at Stanford University in 1895. He practiced with Seward Simons, Kemper Campbell, and Frank Doherty, before entering the city attorney's office. He became Judge of the Superior Court, an office which he held at the time of his death last year.

[3]His biography is given in II Spaulding, "History of Los Angeles," p. 315, to which any reader unacquainted with Judge Jess E. Stephens is referred. *Editor's Note:* Due to the official relationship now existing between the author and Judge Stephens, many complimentary characterizations of his administration as city attorney have been omitted, lest such comment be misconstrued.

H. Neal, legislative representative *par excellence,* and now Assistant City Attorney, came on the scene.

Public improvement matters still were in the fore during the administration of E. "Pete" Werner as City Attorney.[4]

Ray L. Chesebro

Werner was succeeded as city attorney by Ray L. Chesebro in 1933. At this moment, Ray L. Chesebro has served the City of Los Angeles as its City Attorney for a longer period than any other incumbent during the City's one hundred seventy years of existence.

Born at Mazeppa, Minnesota, on August 28, 1880, Judge Chesebro was bereft of his parents at an early age, and at 18 was earning his living as a telegrapher on the Minneapolis & St. Louis Railway. For a year and a half, he worked in a wholesale commission house in St. Paul, Minnesota. Along the way, he learned shorthand and typing. This paved the way for his next advancement, in which he served H. M. Pearce, General Freight Agent of the Northern Pacific Railway, as private secretary. This railroad secretarial experience brought him to Los Angeles in 1904, as a stenographer in the offices of the Santa Fe Railroad.

In 1907 while John W. Shenk was working on the annexation of San Pedro and Wilmington by means of the "shoestring strip," Ray L. Chesebro, then living in San Pedro, became secretary of the Consolidation Commission. He stepped from this to another public service, when he became secretary of the Los Angeles County Highway Commission, then engaged in securing highways adequate for the new-fangled motor buggies which were making their appearance in the city.

He then decided to make the law his profession. With the same determination and intensity of purpose which had won him an enviable reputation as secretary of the commissions, he laid out a rigorous routine for himself which bore fruit in his admission to the bar in 1909.

[4]E. P. Werner was born at Eau Claire, Wis., in 1893; is a graduate of the University of Southern California. He served in the 91st Division in World War I, and from 1921-1929 was Chief Counsel, State Inheritance Tax Department. In 1929, he was elected city attorney, and was defeated for reelection by R. L. Chesebro in 1933.

(Continued on page 146)

CONTROL OF MINORS' ESTATES

By Newcomb Condee,
Judge, Probate Master Calendar,
Los Angeles County Superior Court

Newcomb Condee

THE Probate Code gives little or no status to an attorney for a guardian. The guardian may appear at each hearing with a new attorney and while he is probably personally liable to the attorney for his compensation, he and not the attorney must seek the court's approval of a reasonable fee.

The result of this situation has been that the attorney frequently loses all contact with his client. After a time he may not have the guardian's latest address and this does not appear anywhere in the court file.

Beginning on the 1st of January of this year, the Probate Department of the Superior Court in Los Angeles County has required each guardian of a minor, when appointed, to register with Mr. Coit I. Hughes, the Probate Investigator and Auditor. The guardian's address and other facts are recorded which will assist in identifying and locating him should occasion require.

Each newly appointed guardian is given a letter of instructions from the judge, which sets forth in simple language his duties and obligations, including the statutory requirements in regard to filing an inventory and an account. The final paragraph in this letter reads as follows:

> "The judge will not personally interview guardians in his chambers. Your attorney is your representative before this court. It is important that you cooperate with him at all times so that he may assist you in carrying out the responsibilities entrusted to you."

A kardex tickler system is used and if the inventory is not filed as required, the guardian is notified. When accounts are filed, notations are made on this card and if accounts are not filed as required by the Probate Code, the guardian is notified.

Before setting up this system, a detailed analysis was prepared of all guardianships filed in the year 1946. This work was done by Probate Investigator James P. Stuart and an analysis of this data was prepared by Probate Examiner E. H. Estill.

During the year studied, 2763 guardianship petitions were filed. This represented 20.5% of the total number of probate filings. Of these guardianship filings 822, or 20.9%, were for incompetency proceedings and these are excluded from this study. There were also 592, or 21.4%, of these petitions filed pursuant to Section 1431 of the Probate Code for the settlement of a minor's claim for injury. These were separately studied and are not discussed here.

Of the 1349 petitions for Letters of Guardianship for a minor filed during the year 1946, it was found that 435 were for the person only, 400 for the estate only, and 440 for the person and estate. The discrepancy of 74 between the total of these figures and the petitions filed represent matters which were transferred, dismissed, consolidated, or put off calendar.

An analysis showed that the guardian of the estate was a parent in 67% of the cases, a relative in 22%, a stranger in blood in 6%, and a corporate guardian in 5%.

It was found that faithful performance bonds, aggregating the sum of $3,324,000.00, were filed in these guardianships, all of which were filed by corporate sureties except $247,000.00, representing personal bonds filed.

Up to the time of making this study in the latter part of 1949, inventories and appraisements had been filed in only 51% of these guardianships, showing an aggregate appraised value of these estates to be $4,392,228.38.

Total assets shown on the first accounts current which were filed in 55% of these minors' estates was $4,953,343.35.

Thus three years after the issuance of letters, only about one-half of the guardians appointed to administer minors' estates had seen fit to report to the court. The fact that fewer inventories than first accounts were filed is probably due to the fact that when the estate has only money, the account is frequently filed without previously filing an inventory and the court then excuses this omission.

An investigation is now being made to find out what happened to these estates which have been open three years and concerning which no report has been made to the Probate Court. In some of these cases there is probably a simple explanation to the effect that when the estate was opened there was an expectancy which has never materialized. Experience demonstrates, however, that

(Continued on page 145)

CRIMINAL PROCEDURE IN THE LOS ANGELES MUNICIPAL COURT[1]

By Dickinson Thatcher*

Dickinson Thatcher

ATTORNEYS engaged primarily in civil practice are occasionally called upon to represent clients in the Criminal Division of the Los Angeles Municipal Court. For such attorneys this article is written.

I. INSTIGATION OF CRIMINAL PROCEEDINGS AND THE CITY ATTORNEY'S OFFICE

Arrests.—The bulk of all misdemeanor complaints[2] are filed pursuant to arrests made by police officers[3] upon the basis of the information contained in the arrest reports. Arrests however are not necessary to instigate criminal proceedings in the municipal court.

Requests for Complaints.—Complaints are frequently filed in response to requests made by persons who come to the City Attorney's Office. These requests are more often made by governmental agents from various departments[4] and by citizens than by police

*Dickinson Thatcher, B.S., University of California at Los Angeles, 1941; LL.B., Stanford University, 1948. Military service with United States Army, 1942-1946. Deputy City Attorney since July, 1948. (Photo by courtesy of Bench and Bar.)

Acknowledgment.—The author wishes to express appreciation for the Judges and the Deputy City Attorneys with whom he has worked in the Criminal Division. Particularly he feels personal indebtedness to Deputy City Attorney Tom C. Williams for his encouragement, to Deputy City Attorney Roland Wilson for his teaching, and to Chief Deputy Boyd Alan Taylor for his guidance.

[1]CAL. PEN. CODE §§ 1426-1460 cover rules for justices' and police courts. These provisions, exclusive of the justice court venue provisions (§§ 1431, 1432), are made applicable to municipal courts. CAL. PEN. CODE § 1461a.

[2]Under the City Charter it is the duty of the City Attorney to draw complaints for misdemeanors committed against the laws of the state and city. Charter of the City of Los Angeles, Ann. §§ 42(8), 42(6) (1948). See also Municipal Court Act of 1925, DEERING'S GEN. LAWS Act 5238, § 24.

[3]Not only police officers, but also certain other governmental agents, made arrests. For example, agents from the Board of Public Utilities (Department of Public Transportation) and the Board of Medical Examiners make arrests. Sometimes citizens make arrests. With the cooperation of the Los Angeles Police Department, arrest reports similar to those prepared by police officers are made by arresting agents and citizens. These reports are submitted to the City Attorney's Office for proper action thereon.

[4]The various departments included in the *State* government: Board of Accountancy, Board of Architectural Examiners, Board of Barber Examiners, Board of Cleaners, Board of Cosmetology, Board of Dental Examiners, Board of Equalization, Board of Medical Examiners, Board of Nurse Examiners, Board of Optometry, Board of Pharmacy, Board of Registration for Civil Engineers, Bureau of Food and Drug Inspections, Bureau of Furniture and Bedding Inspection, Contractors' State License Board, Department of Agriculture, Department of California Highway Patrol, Department of Employment, Department of Insurance, Department of Motor Vehicles, Department of Public Health, Department of Social Welfare, Detective License Bureau, Division of Corporations, Division of Fish and Game, Division of Laboratories, Division of Labor Law Enforcement, Division of Narcotic Enforcement, Public Utilities Commission, Railroad Commission, State Sealer (Weights and

officers. In many instances complaints are prepared and filed immediately. Sometimes complaints are refused outright. Sometimes an office hearing will be set for a date in the near future, usually a week or so later.[5]

The purpose of the office hearing is to determine whether or not in the opinion of the City Attorney a misdemeanor has been committed.[6] These hearings are held in Room 260, City Hall. They are not to be confused with felony "preliminary hearings" to determine whether or not a public offense has been committed and whether or not the defendant is to be held to answer. Prior to the usual office hearing there is no filing of a complaint. The office hearing is held by a Deputy City Attorney; it is not held before a magistrate.

The outlying branch offices[7] follow a similar procedure in the filing of complaints and in the holding of office hearings to determine whether complaints should be filed. Inasmuch as the jurisdiction of a branch court is city-wide, complaints are filed in branch courts for convenience.

Why Booking on Arrest May Differ from Charge in Complaint.—Why is it that a person booked for violation of Section 41.27a of the Los Angeles Municipal Code[8] (drunk in public) may, also, be charged in the complaint with violation of Section 502 of the Vehicle Code (driving while under the influence of intoxicating liquor)? The booking is made for 41.27a L.A.M.C. rather than 502 V. C. for this reason: the arresting officer did not actually see the defendant driving the car, hence the drunk driving was not "in his presence."[9] Other persons may have seen the defendant drive. If they supply their names, the officer will submit

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Measures), and Structural Pest Control Board; in the *County* government: Air Pollution and Weights and Measures; and in the *City* government: Board of Public Works, Building and Safety Department, City Clerk, City Engineer, Department of Animal Regulation, Department of Social Service, Division of Forestry, Fire Prevention Bureau, Health Department, and Zoning Department; and all other state, county, and city agencies that avail themselves of misdemeanor charges as a means of law enforcement.

[5]If it is decided that an office hearing should be held, the defendant is notified in writing and given an opportunity to appear in the City Attorney's Office.

[6]The action to be taken may be discussed broadly. The decision of the City Attorney's Office may be announced at the hearing, or deferred to a later date if the matter is taken under advisement. If the defendant is told at the hearing that a complaint is to be filed, he is usually given a slip of paper telling when and where to appear for arraignment.

[7]Located at Van Nuys, West Los Angeles, and San Pedro.

[8]Copies of municipal ordinances may be obtained without charge at the City Clerk's Office, Room 195, City Hall.

[9]A police officer is not authorized to make an arrest for a misdemeanor committed outside of his presence. See CAL. PEN. CODE § 836 for police officers' limited power to arrest.

(Continued on page 148)

BOOK REVIEW

MANUAL OF PREVENTIVE LAW. By Louis M. Brown, assisted by Edward Rubin. Prentice-Hall, 1950.

THE thesis of this book is that most of the difficulties which people have with other people, leading to lawsuits, or with the "law" itself, are foreseeable and preventible. Prevention, it is correctly observed, costs less than cure. Making due allowance for uncertainty in the law itself, and the still greater uncertainty surrounding the facts in any particular case, there is still a large area within which reasonable stability and certainty prevail and the results of any given conduct are predictable.

How is the man unlearned in the law, to whom most legal troubles befall, to know when he is approaching a danger zone? There are certain signals which serve as a warning. Obviously a man already under arrest, or who has been sued, does not need to be warned that he is likely to get into trouble. He has run past the signal, if there was one, and there usually is.

Mr. Brown has an interesting discussion of these signals which serve to warn the wayfarer and to suggest that if he doesn't understand fully what he is doing, he is in need of advice. Among them are matters relating to the following: Money (borrowing, lending, promising to pay); property (buying, renting, transferring, using); status (marriage, parentage or claims that parenthood is an accomplished or anticipated fact, change of citizenship or domicile); injury (personal torts, damage to property, including intangible rights); relationship (marriage, parent and child, partnership, principal and agent, trustee and beneficiary, mortgagor and mortgagee, landlord and tenant).

All these things and all these relationships become the subject of legal rights and duties, the source from which liabilities may flow. Forewarned, the persons affected may by taking thought reduce, even though they cannot altogether avoid, the attendant risks. A large area must be allowed for self-help where the risk is small or the transaction trivial. For example, a man does not ordinarily need a lawyer standing by when he purchases a suit of clothes, although that "is a law-creating event." He would do better to take his wife along. Similarly, most people about to get married do not have their minds focused upon legalities, and do not seek their lawyer's advice, though perhaps more would do well to do so.

How is the layman to minimize his legal risks? It is recognized that "there are no generally recognized techniques for the prevention of legal trouble." Legal rights and duties can be catalogued—roughly, it is true—and periodically reviewed. Perhaps the value of such an inventory is in the creation of awareness of their existence and alertness for preventive measures. There are some things the layman can, others he must do. He must make the returns (of taxes, for example) required by law. He must make timely assertion of demands if he wants to preserve his rights. He should perform his own obligations where possible. He should obey the law. When in doubt, he should inquire of someone assumed to know.

It is recognized that no forethought will anticipate all risks. As Justice Holmes has said: "Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge." Though a man leaving his house in the morning may firmly resolve to commit no torts today, he has no guaranty against speedy embroilment in a collision, or running down an unwary pedestrian. Or take the case of the lady mind reader who, according to a recent local press item, brought suit for $20,000 against a "beauty shop" operator, claiming that the latter's method of inducing a "permanent wave" had destroyed her psychic powers. It may be doubted whether the actual presence of the operator's lawyer during the entire process would have prevented a result so extraordinary. Unless business is to stagnate, some risks have to be run, and we may as well make up our minds to it.

The first part of Mr. Brown's book, which has been delineated above, explains the need for preventive law and how it works. The second and longer part of the treatise tells how preventive law may be made use of. The chapter headings, a partial list of which follows, are informative: Making an Offer; Replying to an Offer; When Asked to Sign a Document; When Buying Goods; When Selling Goods; Extending Credit; and so on, the subject matter including the principal generic types of transactions out of which lawsuits ("fact suits," Judge Jerome Frank calls them in his The Courts on Trial) arise. Each chapter is supplemented by the facts and opinions in actual cases, many of them leading and all having point and interest, illustrating the principles discussed in the text. Incidentally, the second part of Mr. Brown's treatise offers a useful summary and review of a wide field, em-

bracing generous segments of commercial law, contracts, torts, and the law of persons.

So far as I know, this treatise is the first of its kind. Although it is a lawbook, it is to be hoped that it will have a large circulation among literate and intelligent laymen, for whose benefit it sets up beacons to warn and to guide. It is a storehouse of material which bar groups might use (with Mr. Brown's consent, of course) to humanize the law and lawyers, and to render the public conscious of the value of prevention of legal troubles. Mr. Brown's book could well be a landmark, a starting point from which some day may be traced a new emphasis upon the law as the means of preventing the very evils which now, in the popular mind at least, it is too often deemed to foster and to promote.

WALTER L. NOSSAMAN.

INSURANCE PANEL MEETINGS

The Insurance Committee of the Bar Association is conducting panel discussions and lectures on Insurance Law on the second Tuesday of each month, at 4:30 P. M. to 5:30 P. M., in Department Two of the Superior Court, on the eighth floor of the Hall of Records. All members of the Bench and Bar are invited, without charge. If you are interested in Insurance Law you should attend these meetings.

At the November meeting of the panel, Clarence Runkle spoke on the subject "The Other Insurance Clause" and Raymond Stanbury covered the question of "Liability of Insurers in Excess of Policy Limits."

The dates of the meetings and the subjects of discussion by Members of the Panel, are as follows:

Dec. 12, 1950—FOOD PRODUCTS, by Sidney Moss; and DECLARATORY RELIEF, by Stevens Fargo.

Jan. 9, 1951—SURVIVAL OF TORT ACTIONS, by White McGee; and RECENT TREND IN AVIATION CASES, by Forrest Betts.

Feb. 13, 1951—CO-OPERATION AND ASSISTANCE BY INSURED, by Gordon Snow; and PROFESSIONAL LIABILITY, by Fred Reed.

Sigurd E. Murphy, Chairman of the Insurance Committee, is acting as moderator.

Other Members of the Committee assisting in arranging the meetings are Richard F. Alden, William C. Brennan, E. Avery Crary, George Tackabury and Don F. Tyler.

A LETTER OF LORD MACAULAY ON THE DURABILITY OF AMERICAN INSTITUTIONS*

Holley Lodge,
Kensington, London,
May 23, 1857.

Dear Sir:

The four volumes of the "Colonial History of New York" reached me safely. I assure you that I shall value them highly. They contain much to interest an English as well as an American reader. Pray accept my thanks, and convey them to the Regents of the University.

You are surprised to learn that I have not a high opinion of Mr. Jefferson, and I am surprised at your surprise. I am certain that I never wrote a line, and that I never in Parliament, in conversation or even on the hustings—a place where it is the fashion to court the populace—uttered a word indicating an opinion that the supreme authority in a State ought to be entrusted to the majority of citizens told by the head; in other words, to the poorest and most ignorant part of society. I have long been convinced that institutions purely democratic must, sooner or later, destroy liberty or civilization, or both.

In Europe, where the population is dense, the effect of such institutions would be almost instantaneous. What happened lately in France is an example. In 1848 a pure democracy was established there. During a short time there was reason to expect a general spoliation, a national bankruptcy, a new partition of the soil, a maximum of prices, a ruinous load of taxation laid on the rich for the purpose of supporting the poor in idleness. Such a system would, in twenty years, have made France as poor and barbarous as the France of the Caslovingians. Happily, the danger was averted, and now there is a despotism, a silent tribune, an enslaved press. Liberty is gone, but the civilization has been saved. I have not the smallest doubt that if we had a purely democratic government here, the effect would be the same. Either the poor would plunder the rich and civilization would perish, or order and prosperity would be saved by a strong military government and liberty would perish. You may think that your coun-

*(Published in "Life and Letters of Lord Macaulay"—Harper's New Monthly Magazine, 1877.)

try enjoys an exemption from these evils. I will frankly own to you that I am of a very different opinion. Your fate I believe to be settled, though it is deferred by a physical cause. As long as you have a boundless extent of fertile and unoccupied land, your laboring population will be far more at ease than the laboring population of the old world, and, while that is the case, the Jefferson politics may continue to exist without causing any fatal calamity. But the time will come when New England will be as thickly populated as Old England. Wages will be as low, and will fluctuate as much with you as with us. You will have your Manchesters and Birminghams, and in those Manchesters and Birminghams hundreds of thousands of artisans will assuredly be sometimes out of work. Then your institutions will be fairly brought to the test. Distress everywhere makes the laborer mutinous and discontented, and inclines him to listen with eagerness to agitators who tell him that it is a monstrous iniquity that one man should have a million while another cannot get a full meal. In bad years there is plenty of grumbling here, and sometimes a little rioting. But it matters little, for here the sufferers are not the rulers. The supreme power is in the hands of a class, numerous indeed, but select; of an educated class; of a class which is, and knows itself to be, deeply interested in the security of property and maintenance of order. Accordingly, the malcontents are firmly yet gently restrained. The bad time is got over without robbing the wealthy to relieve the indigent. The springs of national prosperity soon begin to flow again; work is plentiful, wages rise, and all is tranquility and cheerfulness. I have seen England pass three or four times through such critical seasons as I have described. Through such seasons the United States will have to pass in the course of the next century, if not of this. How will you pass through them? I heartily wish you a good deliverance. But my reason and my wishes are at war, and I cannot help foreboding the worst. It is quite plain that your government will never be able to restrain a distressed and discontented majority. *For with you the majority is the government*, and has the rich, who are always a minority, absolutely at its mercy. The day will come when in the State of New York, a multitude of people, none of whom has had more than half a breakfast, or expects to have more than half a dinner, will choose a Legislature. Is it possible to doubt what sort of Legislature

will be chosen? On one side is a statesman teaching patience, respect for vested rights, strict observance of public faith. On the other is a demagogue ranting about the tyranny of capitalists and usurists, and asking why anybody should be permitted to drink champagne and to ride in a carriage, while thousands of honest folks are in want of necessaries. Which of the two candidates is likely to be preferred by a workingman who hears his children cry for more bread? I seriously apprehend that you will in some such season of adversity as I have described, do things which will prevent prosperity from returning; that you will act like people who should in a year of scarcity, devour all the seed corn, and thus make the next years not of scarcity, but of absolute famine. There will be, I fear, spoliation. There is nothing to stop you. Your Constitution is all sail and no anchor. As I said before, when a society has entered on this downward progress, either civilization or liberty must perish. Either some Caesar or Napoleon will seize the reins of government with a strong hand, or your Republic will be as fearfully plundered and laid waste by barbarians in the 20th Century as the Roman Empire was in the fifth, with this difference—that the Huns and Vandals who ravaged the Roman Empire came from without, and that your Huns and Vandals will have been engendered within your own country by your own institutions.

Thinking thus, I cannot reckon Jefferson among the benefactors of mankind. I readily admit that his intentions were good and his abilities considerable. Odious stories have been circulated about his private life, but I do not know on what evidence those stories rest, and I think it probable that they are false or monstrously exaggerated. I have no doubt that I shall derive both pleasure and information from your account of him.

I have the honor to be, dear sir, your faithful servant,

T. B. MACAULAY

to H. S. RANDALL, Esq. etc.

Tax Note—Property Tax Welfare Exemption

The real and personal property tax welfare exemption has been construed and applied by the California Supreme Court in a recent group of decisions.[1] Guided by the rule of strict but reasonable

[1] *Cedars of Lebanon Hospital v. County of Los Angeles*, 35 A. C. 779; *Serra Retreat v. County of Los Angeles*, 35 A. C. 804; *YMCA v. County of Los Angeles*, 35 A. C. 809; *Pasadena Hospital Ass'n v. County of Los Angeles*, 35 A. C. 829, and *Fredericka Home v. County of San Diego*, 35 A. C. 839.

construction of tax exemptions, the Court granted exemption to property whose use was incidental to and reasonably necessary for the accomplishment of the specific statutory welfare purposes. It was thus found reasonably necessary for a hospital to operate a nursing school and to furnish living accommodations and recreation facilities for its employees; and for a religious organization to furnish housing to priests and lay brothers when institutional necessity was shown. It is important to note, however, that these decisions do not mean that all property on which employees reside is exempt. The County Assessor may still question the actual necessity of such residence by particular employees.

Income producing property is exempt if its use is reasonably necessary for the accomplishment of an exempt purpose. But if the use of such property is competitive and commercial in nature and available to the general public, regardless of the fact that income itself may be used for a proper purpose, the property is not exempt. Exempt property also does not include buildings under construction. Since payments for county flood control are assessments and not taxes, they are not exempt.

A charitable purpose includes humanitarian activities which afford assistance to other than the needy and destitute. Recipients

Editor in charge of this issue—Marvin M. Chesebro

of the charity may thus be required to contribute to the charitable organization.

Although the property of a corporation may have been used exclusively for one or more of the welfare purposes enumerated by statute, it is not exempt unless it was irrevocably dedicated by the articles of incorporation to such specific purposes.

OPINION OF THE COMMITTEE ON LEGAL ETHICS, LOS ANGELES BAR ASSOCIATION

OPINION NO. 174

ATTORNEY AND CLIENT: An attorney should directly advise his client, giving a candid opinion of the merits and probable results of pending litigation.

UPHOLDING THE HONOR OF THE PROFESSION: An attorney should not knowingly permit his client to sign a verification of a pleading before he has read it or has knowledge of its contents.

A member of the profession has asked for our opinion as to the ethics of (1) an attorney failing to advise his client of his conclusion after investigation that there is no legal defense to a suit brought against the client, and (2) the attorney obtaining signature by the client of a verification in blank prior to preparation of a pleading.

As to the first question, Canon No. 8 of the Canons of Professional Ethics of the American Bar Association states:

> "A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, *and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation.* . . . Whenever the controversy will admit of fair adjustment the client should be advised to avoid or to end the litigation."

It appears, therefore, that a failure to advise the client of the conclusion reached after an investigation of the facts of the client's case is improper. In the specific instance presented to us a statement is made that the client was referred to the attorney by an accountant, and that after investigation the attorney advised the accountant that there was no defense and suggested that the accountant call the client. If specific instructions had been given

for procedure in this manner then the attorney might be justified in so doing, but the statement of facts does not indicate the giving of any such specific instructions. Further, it appears that the attorney had obtained the signing of a verification in blank by the client, had required the client to leave all records with him, had called opposing counsel and obtained an extension of time within which to answer, and thereafter failed to file any answer or directly advise the client that he was not filing such answer. As a result, judgment was obtained against the client by default. In such a situation we feel that the least that the client might expect would be direct advice as to the opinion arrived at by the attorney prior to the time when a default could be entered, unless there be additional extraordinary circumstances which have not been disclosed to us.

The inquiry presented also discloses the fact that this attorney had the client sign a verification in blank on the assumption that if ground for defense was disclosed by the investigation the attorney would prepare the answer, fill in the verification and have the answer filed. The vice of this action arises from the nature of the verification which is an affidavit declaring that the party has read the pleading, knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated on information and belief, which matters he believes to be true. It is difficult to see how any person within the intent and framework of the law can sign a verification in blank prior to the time when a pleading has been prepared without being guilty of perjury. Such being the case, if the attorney contributes to such action by advice or suggestion, he most certainly is not abiding by Canon No. 29 of the American Bar Association, which requires that lawyers uphold the honor of the profession and "improve not only the law but the administration of justice." The same Canon requires counsel "upon the trial of a cause in which perjury has been committed . . . to bring the matter to the knowledge of the prosecuting authorities." Citation of authorities seems entirely unnecessary to point out that the action described as unethical.

This opinion, like all opinions of this Committee, is advisory only.

Brothers-In-Law

And What They Are Doing in OTHER BAR ASSOCIATIONS

By George Harnagel, Jr., Associate Editor

George Harnagel, Jr.

AN INSTITUTE for legal secretaries was sponsored this fall by the **Akron** Bar Association at which they received instruction on "Reception Work," "Legal Forms," and "Glamour for the Secretary."

* * *

The feature attraction of the 1950 annual meeting of the **Colorado** Bar Association was the presentation of a "Ten Year Review of Colorado Law" prepared in cooperation with the law schools of the state.

* * *

The **Cincinnati** Bar Association has decided to place placards in places of employment calling attention to its Lawyers Reference Service.

* * *

The **Detroit** Bar Association has just inaugurated a Lawyers Reference Service. Emphasis will be placed on "preventive law."

* * *

As a check against its own condition and performance the **Philadelphia** Bar Association has conducted a survey of 21 metropolitan bar associations. Its first and easiest conclusion, as reported in the October issue of *The Shingle*, its sprightly publication, is that "there is no question but that all bar associations—and ours is certainly no exception—are eternally harried by the two-headed ogre of inadequate funds and inadequate personnel."

* * *

A recent issue of *The Referee's Journal* analyzes bankruptcy proceedings filed during a test period from July 1, 1947,

through March 31, 1949. During that time there were approximately 36,000 bankruptcies. Among the bankrupts were 220 classified as professional persons, of whom only 15 were lawyers. Of these 15 lawyers, 10 went bankrupt for reasons not connected with the practice of law. Five became bankrupt because their personal obligations became too heavy for the income they were able to obtain from their practice. All of the lawyer-bankrupts practiced law alone.

* * *

The Younger Members Committee of the **Chicago** Bar Association recently conducted the Association's 8th annual photographic contest.

* * *

It is reported that one of the judges of the Cook County bench recently assailed the younger members of the **Chicago** Bar Association Committee on Defense of Prisoners as "punks and dumbbells."

* * *

The **Illinois** Bar Association some time ago sent a questionnaire to its members asking them what kind of a magazine they wanted their monthly *Journal* to be. Its October issue puts the composite answers into the mouth of a supposititious Mr. Illinois Lawyer who speaks thus:

"I want my magazine to be pithy, pertinent and practical . . . something that will help me with my everyday practice and if your staff can tell me how to get more business, I'd like that too. . . . I don't want my Journal to be just another law review magazine . . . we shouldn't duplicate their work. . . . I want to read an article that has some meat to it; something concise and straight to the point. . . . For example, I need to know more about recent legislative changes and important court decisions. . . Let's have more articles on bread and butter subjects . . . and on business accounting and office management. . . . What about personal items? . . . I'm about half and half on those. . . . Sometimes I think it is kid stuff . . . and then again I enjoy reading about my fellow lawyers and their activities. . . ."

VOLUNTEERS NEEDED FOR COMMITTEE ON LEGAL SERVICES TO ARMED FORCES

In response to a need which has become increasingly apparent since the outbreak of the Korean war, the Los Angeles Bar Association is again organizing a committee to advise and assist servicemen with respect to their rights under the Soldiers' and Sailors' Civil Relief Act. Attorneys on the Committee will advise servicemen as to their rights under the Act and take any action necessary to secure and protect such rights. The names of Committee members will also be furnished to the Judges of the Superior and Municipal Courts as attorneys who may be appointed by the courts to protect the rights of defendants known to be in military service, as provided by the Act. Services will be gratuitous.

Members of the Association willing to serve on this Committee are requested to call the office of the Association, MAdison 68261, or Robert B. Ballantyne, Chairman, MIchigan 4141.

THAT CHRISTMAS JINKS

(Continued from page 122)

Jinks. It will be held Friday evening, December 15, 1950, at the Los Angeles Breakfast Club.

Rehearsals are under way for the show which will follow dinner. Strictly an amateur performance, entirely written, directed and performed by members of the Association, it will be entertaining, fast moving and of comfortable duration.

The Christmas Jinks is the one time of the year when members, their wives and guests get together in convivial surroundings for an evening of pleasant relaxation. Announcements will be in the mail shortly and members are reminded that the Jinks have always been sell-outs. Top capacity of the Los Angeles Breakfast Club is 600 and dinner reservations must necessarily be closed when that number of tickets have been sold.

Silver Memories

Compiled from the Daily Journal of December, 1925.
By A. Stevens Halsted, Jr., Associate Editor.

A. Stevens Halsted, Jr.

ASSOCIATE JUSTICE **William H. Waste** has been appointed to succeed Chief Justice **Louis W. Myers,** whose resignation from the California Supreme Court becomes effective January 1st. Justice Waste was a legislator for two sessions, a Superior Court Judge of Alameda County, and an Appellate and Supreme Court Justice. He is a native son of California, having been born near Chico in 1868. He attended public school in Los Angeles and graduated from the University of California in 1891 and from Hastings College of Law in 1894.

* * *

Governor Richardson has also appointed Associate Justice **Jesse William Curtis** of the Second District Court of Appeal to the Supreme Court. Judge Curtis was on the Superior Bench in San Bernardino County for many years, and in 1923 was elevated to the Appellate Court. Justice Curtis was born in San Bernardino, was graduated from the University of Southern California and served a term as District Attorney of San Bernardino County before going on the Superior Bench in 1914.

* * *

After January 1st the federal government will issue no more permits to make non-intoxicating fruit juices, and beginning with that date federal agents will visit holders of government permits granted in the past to inspect fruit juices for their alcoholic content. Any which contain more than one-half of 1 per cent will be seized and the owners arrested.

Wine and fruit juices with a "market" valuation of more than $7,000,000 made in Southern California by 10,000 persons under government permit, may be destroyed under this new ruling.

* * *

Frederick G. Stoehr, present Deputy City Attorney of Pasadena, has been appointed City Prosecutor of the Crown City to succeed **Leonard L. Riccardi,** who has resigned.

* * *

H. G. Bockius, Assistant Trust Officer at the Title Insurance and Trust Company since 1915, has resigned to join the Guaranty Building and Loan Association of Hollywood. He will be succeeded by **H. Clifford Allen, Jr.,** who has been associate counsel for the Title Company since 1920.

* * *

E. C. La Rue, hydraulic engineer of the United States Geological Survey, has testified before a Senate committee that the project to build a dam at Boulder Canyon on the Colorado River should be abandoned in favor of one at Mojave, Glen Canyon or Bridge Canyon. He declared that construction of the high dam at Boulder Canyon will result in an unnecessary waste of water to the detriment of irrigation. Secretary of Commerce **Herbert Hoover** disagrees, believing that the dam should be built where there is a power market. He urges that a dam at Boulder would serve the triple purpose of flood control, irrigation and power. Senator Ashurst, Democratic Senator from Arizona, urged that the Federal government go on record in favor of a policy of using in this country all waters of the Colorado River so that the Mexican Government and owners of land in Mexico now using the waters for irrigation may have notice.

* * *

Having had three generations of a noted family of attorneys practice in his court is one of the distinctions Judge **Charles Monroe,** senior jurist of the local Superior Court, has enjoyed. Years ago **John D. Works,** former United States Senator and father of Justice **Lewis R. Works** of the District Court of Appeal, tried cases before Judge Monroe. Justice Works then followed in his father's footsteps, appear-

(Continued on page 158)

CONTROL OF MINORS' ESTATES

(Continued from page 126)

in most of these cases the guardian has ignored his attorney and is managing the estate according to his own ideas of his responsibility to the minor, or has perhaps actually converted the property to his own use.

It is a laborious task to check back over these hundreds of guardianships, but at least those cases which were commenced since January 1, 1950, will be kept under control at all times.

It is interesting to note that 415 of the first accounts current which have been filed claim deductions, the total of which amounted to $1,156,131.76. In 98 of these estates the guardian claimed a fee, the aggregate total of which was $28,353.05, while in 368 of these accounts attorney fees were allowed in the aggregate sum of $107,181.12.

This reflects the general practice in these estates. In most of the estates if the guardian is closely related, such as a parent, or grandparent, he desires to keep his "amateur" status and does not claim guardianship fees. Apparently in many of these estates the attorney also waives his fees, but in any event the percentage of attorney fees allowed is very small. In the smaller estates the attorney is rarely compensated for the real value of his services.

These first accounts current report 88 real estate sales and 23 sales of personal property, 24 petitions for investment, 71 petitions for changing investments, and 30 citations of various kinds.

Up to the time of the study there had been 130 second accounts current filed and 85 third accounts current filed, and 129 of these estates had been terminated by reason of the ward having reached his majority.

CITY ATTORNEYS OF LOS ANGELES

(Continued from page 124)

In 1911 he was appointed judge of the Police Court, and thereafter was twice reelected. His experience in dealing with public prosecutions and penal ordinances has an important bearing on his excellent administration of the prosecuting division of the city attorney's office.

When he left the Police Court bench, Mr. Chesebro had decided that the highest aim of any lawyer was the successful private practice of the law. In 1933, when he was "drafted" by citizens to be a candidate for the office, he probably considered it only a protest at the then state of affairs. When he was elected, no one was more surprised than he; and he certainly did not foresee that he would be in office longer than any other city attorney before him.

He steadily has maintained his basic premise; the private practice of the law is the goal to be desired. As one and another of his staff during these sixteen years has found some opportunity out of public service, he cheerfully has urged him to take it, and wished them god-speed; and has set about to readjust his staff as best he can. Now there are dozens of persons in the general practice who prize their days in his office, and who assist it in its smooth administration of public business from their vantage points in the community.[5]

Though the city attorney's office in Los Angeles is one of the largest law offices in the United States, it apparently lacks the administrative framework which public administrators these days might consider typical, if not essential. Ray Chesebro has maintained that each lawyer in his office, particularly in the civil departments, has full responsibility for the cases or matters assigned him. He gets help but not detailed supervision. If the

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[5]Some of those who have left the city attorney's office in recent years for private practice are:

Marvin Chesebro, son of the city attorney; W. Joseph MacFarland, assistant city attorney, who headed the Prosecuting Division; Robert Moore; Alfred C. Bowman, now on duty with the Army, former military governor of Trieste; Edward L. Shattuck, candidate for office of attorney general; Ellsworth Meyer, judge of the Superior Court, and Grand Master, F. & A. M., of California; Don Kitzmiller; Jerrell Babb; Clyde P. Harrell; Frank Ferguson and Robert Patton, of the Fox Studio legal staff; Walter Bruington; Carl H. Wheat, public utilities counsel of Washington, D. C.; Al Forster; Milton Springer of the Southern California Gas Company staff; Grant Cooper, later of the District Attorney's staff and now in criminal law practice; W. Turney Fox, former assistant city attorney in the Water and Power Division, now Superior Court judge.

Some splendid lawyers died in the service of the office, including Thatcher Kemp; Frederick von Shrader, gentleman, scholar, and accomplished trial lawyer; Newton J. Kendall, colorful assistant who headed the Prosecuting Division; Mr. Stevens, who headed the Water and Power Division; and Cecil Borden, well-known trial lawyer.

S. B. Robinson, Robert L. Todd, Moresby White and Fairfax Cosby are among those who retired from the office.

individual lawyer is not equal to such a responsibility, he therefore is not adapted to the office. Yet very few men have failed to meet the requirement. Judge Chesebro is a swift and accurate judge of men's capabilities, and when he and his assistants concur on the choice of personnel, it has been almost always a highly satisfactory choice. He personally directs the work of the office on a lawyer to lawyer basis.

As a city attorney, Ray L. Chesebro maintains that civil service would stultify the usefulness of the office to the people. It is certain that the approval of the voters given his administration has permitted him to maintain a judicial independence from political factions. At times, he has been able to personally give impetus to public matters, as would be expected from counsel in big corporate enterprises; and has refused to assent to a view that the chief law officer of the country's thrid largest city should remain silent unless spoken to, when public matters needed attention.[6]

Offered an official car, he refused it, and drives his own. When the city prosecutors' office was consolidated, he found that courtesy special investigator's badges had been issued by that office, far and wide, and were being misused. So badges of any kind were abolished in the city attorney's department.

At the outbreak of World War II, twenty-three of his men were called into service. Despite all of the demands made upon the office, and still further depletions by the armed forces, he carried on the office under a heavy load and reduced personnel throughout the war period. Yet in that period he found time to endear himself to City Attorneys all over the United States in the National Institute of Municipal Law Officers, and was elected to its presidency.

It is not possible in the compass of this article to explore the achievements of the city attorney's office in these latter years, which deserves a special chapter of its own; nor to name all of those assistants, deputies and secretaries, typists, investigators, clerks and accountants, who compose the firm of "Ray L. Chesebro, City Attorney," and to whom he never ceases to pay generous tribute.

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[6]The improvement of the rapid transit system with new equipment; the inauguration of weekly passes thereon; his insistence that the city must make provision for new sewage disposal works; his early insistence that the city prosecutor's office be consolidated with the city attorney's, are some examples which come to mind. Most dramatic, perhaps, was the seizure of the offices of the civil service department, by which corruption therein was disclosed and on account of which, the department was reorganized and is one of the best in the country.

Ray L. Chesebro, the incumbent city attorney, who has served the people the longest of any in that capacity, fittingly summarizes the honor, the dignity, the high degree of selfless public service, the impartial administration, personal integrity, and professional excellence that have characterized this office throughout the one hundred seventy years of our city, LOS ANGELES.

THE END.

CRIMINAL PROCEDURE IN THE LOS ANGELES MUNICIPAL COURT

(Continued from page 128)

their names to the City Attorney's Office as witnesses to driving. Upon the basis of this information the City Attorney's Office files a complaint charging violation of Section 502 of the Vehicle Code and Section 41.27a of the Los Angeles Municipal Code.

Other charges are often added to the one for which defendant was booked.[10] This is done because the arrest report may show other violations of the law.

The District Attorney's Office may for legal reasons refuse to file a complaint against a person booked for a felony. Or a police officer may book a person for a felony, conduct a further investigation, and then not seek a felony complaint. In each of these situations a misdemeanor complaint may be sought at the City Attorney's Office. Thus many felony bookings ultimately result in the filing of misdemeanor complaints.[11]

II. PROCEDURE UPON ARRAIGNMENT

Divisions 30 and 30A, Arraignment Divisions.—The court in Divisions 30 and 30A puts at the head of the calendar all cases in which defendants are represented by counsel. Upon appearing in Division 30 or 30A an attorney should tell the clerk his client's name. The clerk will put the complaint upon the bench so that the case may be called before cases of defendants appearing *in*

[10] *E.g.* CAL. PEN. CODE § 415 (disturbance of the peace) may be added to CAL. PEN. CODE § 242 (battery); L.A.M.C. § 63.51j (indecent conduct and indecent language in a public park) or CAL. PEN. CODE § 415 (disturbance of the peace—offensive conduct) may be added to CAL. PEN. CODE § 647-5 (vagrancy—lewd).

[11] *E.g.* CAL. VEH. CODE § 502 (driving under influence of liquor—misdemeanor), after a booking for CAL. VEH. CODE § 501 (driving under influence of liquor—felony); CAL. PEN. CODE 647-12 (vagrancy—prowler) after a booking for CAL. PEN. CODE § 459 (burglary).

propria persona. At the time of speaking to the clerk it is also advisable to check upon the charges.[12]

Copies of complaints usually are not prepared for defendants unless they are requested. In the ordinary type of case such as intoxication, prostitution, petty theft, and battery, the defendant is satisfied with a brief oral description of the charges against him. This is less apt to be true of defendants charged with technical violations of the law.[13] If a copy of the complaint is desired, it may be obtained by telephoning the City Attorney's Office.[14]

Demurrers.—Before entering a plea the attorney may wish to demur to the complaint.[15] Failure to demur waives all defects in the complaint except what can be raised on a motion in arrest of judgment.[16]

Pleas.—After discussing a case with his client, the attorney may be convinced that the amount of evidence pointing to the defendant's guilt is so great that there is nothing to do but to plead him guilty. If there is doubt in the attorney's mind with reference to the proof of guilt, he may consult with the City Attorney's Office. The prosecution will be glad to discuss the case generally.

Bail.—Sometimes an attorney can save his client the cost and inconvenience of putting up bail by convincing the court that the defendant is a responsible person who can be depended upon to appear in court at the appointed time. If the court is convinced, the defendant may be released upon his own recognizance. Even if the court does not feel disposed to release the defendant

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[12]Before court starts an attorney should check upon the charges in the complaint and obtain the municipal court number. It might be well to read either the court's copy or the City Attorney's copy of the complaint. Advance checking saves the court time. It also saves the attorney from any possible embarrassment which might result in his not being familiar with the charges placed against his client. Court reading of the complaint is almost always waived.

[13]Certain provisions of some codes, *e.g.* CAL. HEALTH AND SAFETY and CAL. BUSINESS AND PROFESSIONS CODE, are quite technical. In the more technical type of case, defendants' copies of complaints are usually prepared in anticipation of possible requests for them.

[14]Telephone Michigan 5211, Extension 2289. But wait one day after arraignment before telephoning the Main Office. The reason for this is that the papers will probably be at Lincoln Heights the day of arraignment. If the complaint is filed at the Lincoln Heights Branch Office, the City Attorney's copy of the complaint does not arrive in the Main Office until the following morning. Defendants' copies of complaints are not prepared at the Lincoln Heights Branch Office.

[15]The demurrer must be in writing. CAL. PEN. CODE § 1428.2. When time to demur is requested the court must put the case over at least three days and not more than five days. *Id.* Hearings upon demurrers are held in the respective arraignment divisions. This is true of all the branch courts. The demurrer may be upon the following grounds: (1) that the court has no jurisdiction; (2) that the complaint does not conform to CAL. PEN. CODE § 1426; (3) that the facts stated do not constitute a public offense; and (4) that the complaint "contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution." (CAL. PEN. CODE § 1428.1. See People v. Saffell, 74 Cal. App.2d (Supp.) 967, 168 P.2d 497 (1946).)

[16]*Q.v., infra.*

"O.R." the court may in the proper case set the bail at a figure lower than the usual amount.

Is it advisable to ask the court to reduce bail when bail has already been put up? A reduction in bail is likely to be more disadvantageous than helpful. If the old bail is cash, it is not returned to the defendant until five to ten days after exoneration and he ties up new bail money in the meantime. If the old bail is a surety bond, it is exonerated and the bond is usually substituted under the new bail; but there is no return of any part of the original charge. So the net result of a reduction in bail is that there is usually no advantage gained.

The situation is entirely different when the court is setting bail initially. The defendant may have remained in custody up until the time he is arraigned. Or he may have put in a voluntary appearance in response to a request from the City Attorney's Office.[17] Or he may have come into court upon a voluntary surrender after a bench warrant has been issued. In each of these situations no bail has been put up. It is proper in these cases to ask that bail be set at as low a figure as the court may see fit.

III. MOTIONS AND PLEAS IN DIVISION 7, THE MASTER CALENDAR DIVISION

Afternoon Session.—Attorneys desiring to make motions in Division 7 in advance of the trial date should come into court in the afternoon. Motions to dismiss,[18] changes of pleas from not guilty to guilty, submissions for decision on arrest or office reports, motions to continue for trial, and motions to continue for change of plea are all heard in the afternoon. All of these matters should be taken up with the court at least *two* court days prior to the scheduled trial date.

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[17]At office hearings it is sometimes decided then and there that a complaint should be filed. If the defendant is present in the City Attorney's Office at the time, it is customary to give to the defendant a memorandum requesting him to appear for arraignment in a certain division at a specified date and hour. If the defendant appears voluntarily in court at the appointed time, he is then arraigned. If he fails to appear usually a bench warrant is issued and bail is set upon the bench warrant.

[18]Motions to dismiss are sometimes made under §§ 1377 and 1378 of the Penal Code. These are the compromise provisions. If the case properly falls within these sections and the complaining witness appears in court to tell the judge that he has received satisfaction, the court will usually dismiss the case. The Penal Code permits the court in its discretion to dismiss the case "on payment of the costs incurred."

The court may, either of its own motion or upon the motion of the prosecutor, and in furtherance of justice, order a complaint dismissed. See CAL. PEN. CODE § 1385. Often such motions are made in behalf of the defendant by defense counsel. Technically such motions by defense counsel are not authorized by the Code. If the court does grant a motion made by defense counsel, the court is virtually adopting the defense motion as its own, and then granting it.

A motion to dismiss is in order when a person charged with a crime has since been committed to a mental institution. Get a certified copy of the commitment order and hand it to the Deputy City Attorney. The Deputy City Attorney will usually make the motion himself when such a certificate is given to him.

Traffic Accident Cases.—When pleading a client guilty or stipulating to a submission on the report of the investigation in a traffic accident case, be sure that the court has before it a copy of the traffic accident report, since such reports are not furnished directly to the courts. As a matter of practice the courts use the City Attorney's copy. Without having before it some report the court will not usually proceed to sentence a defendant. An attorney in a traffic accident case may save himself and his client considerable time by telephoning the City Attorney's Office in advance and arranging to have the City Attorney's copy of the traffic accident report sent over to court. In any case other than a traffic accident case, the court will have a copy of the report, whether it be an arrest report, or some other kind of report.[19]

In traffic accident cases the client will often be faced with both criminal and civil liability. Where civil liability is the primary concern, some attorneys feel obliged to plead their clients not guilty and to go to trial. If the attorney's main purpose is to avoid having his client make an admission against interest, the criminal case can be disposed of much more simply by submitting the case to the court upon the traffic accident report. The innocence or guilt of the defendant will be determined by the matters set forth therein. The chances are very great that the defendant will be found guilty. But there is no admission of guilt which can be introduced in a civil action.

Motions for Continuance.—Motions for continuances for trial must be made at least two court days before the trial date. If the motion is made on the trial date and there is no legal ground, the motion will generally be denied. If the motion is made the day before trial, it will be opposed. All motions for second continuances will be opposed and *must* be supported by legal grounds.[20]

IV. PROCEDURAL MATTERS IN THE TRIAL DIVISION

Without touching upon the trial itself, motions after a verdict or a finding of guilty and the matter of judgment and sentence deserve attention.

Motion for a New Trial.—A motion for a new trial[21] may be made any time before judgment (*e.g.*, sentence, as distinguished

[19] *E.g.* Health Department citation, Fire Department citation, City Attorney's Office citation, traffic ticket, etc.

[20] See McKinney, NEW CAL. DIG., Crim. Law § 252.

[21] CAL. PEN. CODE § 1451 lists the grounds for a new trial.

from decision of guilty).[22] In addition to the obvious advantage of such a motion in curing errors of the trial court, the motion serves an invaluable purpose in laying the basis for an appeal. Penal Code, Section 1466(2) provides that a defendant may take an appeal:

(a) From a final judgment of conviction.

(b) From any order made after judgment affecting his substantial rights.

(c) From an order denying a motion for a new trial.

Since there may be no "final judgment of conviction" and hence no "order made after judgment," *there is nothing from which an appeal can be taken unless there is an order denying the motion for a new trial.* Thus, as is frequently the case, the trial judge may decide not to impose sentence. He may suspend proceedings without imposition of sentence and place the defendant upon probation, one of the terms of which may be a substantial term of confinement. In such case, there is no final judgment, hence no order made after judgment, and if defendant has failed to move for a new trial, he can get no appellate review of the trial court proceedings.

An error even more serious would be to move for a new trial at the wrong time, at least without taking prompt steps to perfect an appeal. Thus, the motion might be made immediately after pronouncement of guilt; and then upon its denial, without taking further action, defendant might await the hearing upon his application for probation and the matter of sentence two weeks or so hence. If at that time the court places the defendant upon probation without imposition of sentence, defendant has lost his opportunity to appeal since the five day period for the filing of notice of appeal[23] thereon has elapsed.

The solutions to the problem presented are: (a) be sure to make a motion for a new trial; (b) if probation and sentence is requested, set the hearing upon the motion for a new trial at the same time as the hearing on the application for probation; do not make a motion for a new trial immediately after pronouncement of guilt; and (c) do not accept probation if the terms are too harsh.[24] After a defendant refuses to accept the terms of proba-

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[22] CAL. PEN. CODE § 1450.
[23] CAL. PEN. CODE § 1467.
[24] The applicant for probation has the right to refuse probation when he deems the terms in excess of the court's jurisdiction or too onerous. Lee v. Superior Court, 89 Cal. App.2d 716, 201 P.2d 882 (1949).

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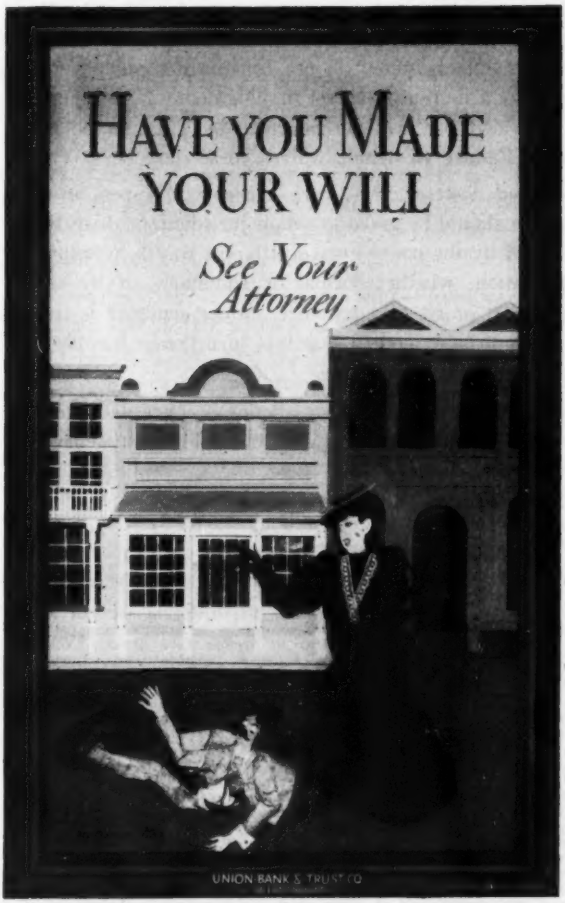

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tion, it becomes "the duty of the court at that moment to sentence him."[25]

Motions in Arrest of Judgment.—A motion in arrest of judgment may be made at any time prior to judgment.[26] It may be founded upon any substantial defect in the complaint.[27] The Penal Code[28] provides that objection to the jurisdiction of the court, or objection that the facts stated do not constitute a public offense, may be taken by a motion in arrest of judgment. The other two objections provided for may not be taken by a motion in arrest of judgment. Failure to demur waives these defects.[29]

Judgment and Sentence.[30]—There are certain types of cases where the court should be asked to retain jurisdiction. Jurisdiction may be retained by the court in two different ways: by expressly granting probation, whether formal or summary, or by simply suspending a part or all of a sentence. Once sentence is passed, the judge can not later modify it unless jurisdiction has been retained in one of the ways suggested.

Probation.—So far as keeping jurisdiction is concerned, the same result is accomplished whether the probation be summary[31] or

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[25] *Id.* at p. 717.

[26] CAL. PEN. CODE § 1450.

[27] CAL. PEN. CODE § 1452.

[28] CAL. PEN. CODE § 1428.1.

[29] People v. Saffell, 74 Cal. App.2d (Supp.) 967, 168 P.2d 497 (1946).

[30] The remarks herein are also applicable to cases involving pleas of guilty in the arraignment and master calendar divisions.

[31] At one time it was held by the Appellate Department of the Los Angeles Superior Court that summary probation could not legally be granted in misdemeanor cases. This was before the 1947 amendment to Section 1203 of the CALIFORNIA PENAL CODE. (Cal. Stats. 1947, Ch. 1178, § 2.) A judgment and sentence and an order purporting to grant summary probation were held void. "We are of the opinion, in view of these clear provisions (P. C. 1203 requiring whenever probation is not summarily denied that the matter be referred to the probation officer) that while probation may be summarily denied, it is erroneous summarily to grant it." Peo. v. Lopez, Cr. A. 1757, and Peo. v. Fagan, Cr. A. 1760, jointly reported in 43 Cal. App.2d (Supp.) 854, 859, 861 (1941); see also dictum in Peo. v. Kaye, Cr. A. 1405 (1937). In 1941 the California Legislature added Section 1203b to the PENAL CODE. (Cal. Stats. 1941, Ch. 24, § 1.) It provides: All courts having jurisdiction to impose punishment in misdemeanor cases shall have the power to grant probation summarily in misdemeanor cases without referring such cases to the probation officer." This rendered the law ambiguous inasmuch as Section 1203 as previously construed still seemed to require reference to the probation officer in all cases, felonies and misdemeanors alike, whenever probation was not summarily denied. This ambiguity was removed by the 1947 amendment to Section 1203. This amendment distinguished the case "not amounting to a felony"; further, "if probation is not denied, and *in every felony case* in which the defendant is eligible to probation . . . the court must immediately refer the matter to a probation officer. . . ." (Emphasis added.) By the express provisions the formal reference requirement is thus made mandatory only in certain felony cases. Reading Section 1203 as amended in light of Section 1203b there is little room for doubt that orders granting summary probation in misdemeanor cases, if properly made, are valid. As to the propriety of indirectly granting summary probation simply by suspending a portion of the sentence see footnote 35.

formal. If probation is desired, and the attorney does not want his client to be required to report periodically to a probation officer, he should ask the court to grant a summary probation. If the attorney feels that there are certain facts about the defendant's personal background which should be brought to the attention of the court, he might do well to ask the court to refer the case to the Probation Department for an investigation and report.

Through terms of probation the judge can accomplish the same thing that he would have accomplished through a straight or alternative sentence.[32] And he is in a position at a later date to modify the sentence or to expunge the record under Sections 1203.3 and 1203.4[33] of the Penal Code. Probation can not be granted in all cases. Persons convicted of certain types of offenses and persons twice convicted of felonies are not eligible.[34]

Suspension[35] *of at Least One Day.*—Another way the court can retain jurisdiction so as to be able later to modify the sentence is to suspend at least one day. Of course this possibility is open only in those cases when the defendant is sentenced to time in jail. If it is felt that something may later be brought to the judge's attention which will cause him to want to modify the sentence, the attorney might do well to ask the court to suspend at least one day of the jail term. The sentence may then be modified at any time prior to the complete serving of the sentence. There is one serious disadvantage to this. A prisoner sentenced to a straight jail term is usually entitled to good time credits.[36] Providing a misdemeanant earns good time credits he will be released after serving five-sixths of his jail term. For example a prisoner

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[32]An example of a straight sentence is "30 days." An example of an alternative sentence is "$150 or 30 days."

[33]If the probationer successfully serves his period of probation, the conviction can be set aside, a plea of not guilty entered, and the case dismissed.

[34]CAL. PEN. CODE § 1203.

[35]When the trial court does not expressly grant probation, but wholly or partially suspends the sentence, the appeldate courts usually treat the suspension as an irregular granting of probation. When not specified the period of probation is measured by the "maximum possible term of such sentence" (CAL. PEN. CODE § 1203.1), *i.e.*, the maximum term for the particular crime involved, and not by the number of days suspended. In re Herron, 217 Cal. 400, 19 P.2d 4 (1933). Suspension of any part of a sentence is void when probation is expressly denied. In re Taylor, 140 Cal. App. 102, 34 P.2d 1036 (1934); In re Eyre, 1 Cal. App.2d 451, 36 P.2d 842 (1934); Ellis v. Department of Motor Vehicles, 51 Cal. App.2d 753, 125 P.2d 521 (1942); Peo. v. Distarce, App. Dept., L. A. Superior Ct., Cr. A. No. 1778 (1941); Peo. v. Gonzales, App. Dept., L. A. Superior Court, Cr. A. No. 1727 (1940). Also the suspension is void when it is expressly not made under the law providing for probation. People v. Harvey, 137 Cal. App. 22, 29 P.2d 787 (1934). The language of some cases indicate judicial disfavor with this indirect method of granting summary probation. See Peo. v. Gonzales, Cr. A. 1727 (1940).

[36]Good time credits are governed by a schedule. See CAL. PEN. CODE §§ 2920 *et seq.*

sentenced to one-hundred-and-eighty (180) days in the City Jail will usually be released at the end of one-hundred-and-fifty (150) days. This is not true of a person sentenced to one-hundred-and-eighty (180) days of which one (1) day is suspended. Unless the sentence is modified in the meantime he will have to serve one-hundred-and-seventy-nine (179) days.

V. PROCEDURE UPON APPEAL

If an appeal is to be taken to the Appellate Department of the Superior Court, written notice of appeal must be filed within five days after judgment or order.[37] This is jurisdictional.[38]

Also, notice of the filing of the transcript must be given to respondent within two days after the event. This requirement is mandatory and may not be waived by respondent. Failure to give notice forfeits appellant's right to make use of the transcript.[39]

VI. APPLICATION FOR PAROLE

A parole board constituted of three persons meets weekly on Thursday mornings at 9:30 at the Los Angeles City Jail to determine whether persons sentenced in the Los Angeles Municipal Court[40] and who have applied for parole, should be paroled. The Los Angeles County District Attorney, the Los Angeles County Sheriff, and the Los Angeles City Chief of Police are each represented. A prisoner is usually not considered eligible for parole until he has served at least one-half of his sentence. If an attorney wishes to get his client out on parole, he should get an application at the Parole Board Office.[41] The application should be filed with the Parole Board Office on or before the Friday preceding the meeting. Attorneys may appear at the Parole Board meetings.

VII. CONCLUSION

If an attorney or a defendant has any question concerning procedure in the Criminal Division of the Los Angeles Municipal Court, he should call upon the Office of the Los Angeles City Attorney, Criminal Division. Its staff is glad to offer whatever information or assistance that it can.

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[37]People v. Cummins, Cr. A. 1357. The Criminal Appeals cases are mostly in the form of memorandum opinions handed down by the Appellate Department of the Superior Court. Unlike the Superior Court Appellate Department's formal opinions published in the Supplement to the California Appellate Reports, there is no general publication of the memorandum opinions. They are mimeographed by the City Attorney's Office, however. The County Law Library Brief Department, Room 500, Law Building, is furnished with them by the City Attorney's Office. They are available there for the use of attorneys.

[38]People v. Borland, Cr. A. 1281; People v. Young, Cr. A. 1457.

[39]People v. Belew, Cr. A. 2493.

[40]Persons sentenced by branch courts as well as those sentenced by the downtown courts can be heard.

[41]421 North Avenue 19.

SILVER MEMORIES

(Continued from page 144)

ing frequently in Judge Monroe's Court before his elevation to the bench. Recently the third generation was represented when Deputy District Attorney **Pierce Works** appeared in Judge Monroe's Court.

* * *

Sunday dancing, which has been one of the main amusement features of the City of Venice for more than 24 years, recently ceased upon the City's annexation to Los Angeles. Sunday dancing was banned many years ago in Los Angeles and has been the subject of bitter wrangles ever since between liberal and church elements in municipal politics. As a solution to the dilemma, City Attorney **Jess E. Stephens** has ruled that the City may create a special zone, including the pier and beach frontage of Venice, and thereby allow Sunday dancing.

* * *

In the current emphasis upon reducing State expenditures, Secretary of State **Jordan** has urged the calling of a Constitutional Convention to devise a new charter of government. He believes this is the State's only hope of achieving that simplicity of organization which is the foundation of economical government. He terms California "the most expensively governed State in the Union," blaming mounting costs on the State's increasing complex organization, a system of government "which has become so cumbersome that it is top-heavy." He says the "present Constitution was framed to meet the conditions of a period long past. It is time to consider the framing of a new Constitution to meet the present complexity of State departments, boards and commissions which were unforeseen."

* * *

The World Court fight has been resumed in the Senate with a protracted struggle indicated. Senator Borah is leading the fight against the Court and is suggesting several reservations: (1) prevention of the League of Nations from imposing any new duties or functions on the Court; (2) a condition of American adherence that no force military or economic shall

be used to compel acceptance of the Court's opinions; and (3) prevention of any "traditionally American questions" being dealt with by the court. Democrats and pro-Court Republicans, remembering that it was the reservations that in the end accomplished the defeat of the League, are hoping to reject all reservations other than those originally proposed by President Harding.

* * *

Dwight Davis of St. Louis has been named Secretary of War by President Coolidge to succeed Secretary **John Weeks** of Massachusetts, who has served five years in the cabinet under two presidents. Davis, a business man with the rank of Colonel in the Officer's Reserve Corps, served as temporary administrator of the War Department during Weeks' recent illness. His defense of the President's economy program against the drive of the general staff for larger appropriations gained for him the President's favor.

* * *

Superior Judge **Frederick C. Valentine** has awarded a total of $107,289 to the Marblehead Land Co. and other owners of Malibu Ranch for a right-of-way across the property. A total of $9,180,000 had been asked by the defendants in the condemnation suit for a new highway. **W. J. Clark,** counsel for Mrs. May K. Rindge, head of the land company, stated the case would be appealed. The trial was one of the longest in the history of the local courts. There were about 1,000 typewritten pages of briefs submitted to the court for consideration.

* * *

A recent lawsuit in Long Beach involved the first collision of airplanes in the air. Testimony indicated that the flying rules, generally developed and accepted by pilots during the last war, may receive legal approval and sanction, and have the same status held by rules governing the conduct of drivers on the road. Judge **Frank C. Collier** ruled against this contention, holding that regulations governing air lanes and so-called rules of the air have no legal or judicial status. Common sense should govern the conduct of airplane pilots, he held.

* * *

Home brewers are safe from raids by prohibition agents

under a Federal ruling, unless the agents in applying for search warrants can show that the sale of the product was made on the premises. If the character of the home is changed to that of a store by installation of liquor-making machinery, the immunity will not exist.

* * *

Radiocasting of copyrighted songs without payment for the privilege is actionable. Judge **Julian Mack** of the Circuit Court of Appeals delivered the ruling that radiocasting is a "public performance for profit."

* * *

The election to the German Presidency of Field Marshal von Hindenburg will not change Germany's foreign policy, according to Dr. Hans Luther, the German Chancellor. "The people of Europe desire the removal of uncertainty and lack of clearness." That "Germany does not desire war" was a further categorical declaration by the Chancellor, who laid great stress upon Germany's adherence to the security pact idea.

* * *

The Board of Supervisors by recent resolution has urged the Legislature to institute the photostatic method of recording official instruments. Los Angeles will save $300,000 annually if this system is adopted by the elimination of part of the large staff now used to copy documents.

* * *

At the 49th meeting of the American Bar Association in Detroit, **Charles Evans Hughes,** President of the Association, decried intolerance and appealed for untrammeled freedom of learning in schools. "Liberty today has such broad scope," Hughes said, "that it taxes the acumen of the ablest statesmen to provide laws which even measurably assure it. The most ominous sign of our times is the indication of an intolerant spirit. It is more dangerous when armed, as it actually is, with sincere conviction. It can be exercised only by the genius which watched over our country's infancy and has guided our development—the American spirit of civil and religious liberty. Democracy has its own capacity for tyranny."